AN 14

ENQUIRY

After further satisfaction concerning obeying a change of Government beleeved to be unlawfull.

Tendred to the *Presbyterian* Proposer, by way of Reply to his Book Intituled; *The lawfulnesse of obeying the present Government.*

By a dissenting Brother

ROM. 14. 23.

He that doubteth, is damned if he eat, because not of faith: for whatsoever is not faith, is sinne.

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To the Author of a Book intituled, *The lawfulness of obeying the present* GOVERNMENT

Honoured Sir,

Having seen your treatise, and being in the number of those to whom your discourse is directed, I do in my own and others behalfs returne you thanks, for your offer and endeavour to hold forth somewhat for the satisfaction of those who desire to walke by rule, and cannot comply with alterations, great, sudden, and of publick concernment upon such grounds, as peradventure take with some others.

In the argument you expresse your self thus, a declaration hath been lately published, wherein the grounds are exprest of setling the present government, with which if any be not so far satisfyed as to think that settlement lawfull, yet even to such is this discourse directed, which propoſeth proofs, that though the change of a government were beleeved not to be lawful, yet it may lawfully be obeyed.

I hope you wil not take offence, if I (having many times read over, and as I was able weighed your treatise) do acknowledg, that I am not yet satisfyed in that which is made the busines of

your book. I ſuppoſe alſo that I ſhall not in this writing give offence to any of different Judgement, and I am apt to beleeve that thoſe that are true to the principles of Liberty of Conſcience, will not take offence at me for propoſing in a peaceable way the grounds of my ſcruples, to ſuch a caſuiſt, as if the worke it ſelf be feaſable, may be a probable inſtrument of clearing that caſe wherein he hath appeared, and therin both ſatisfy the ſpirits of many that truly fear the Lord, and be ſerviceable to the eſtabliſhing of the new fabrick, in a more honourable and laſting way, than the greateſt penaltyes can encompaſſe. For my ſelf I ſhall only adde thus much, that I am perſwaded, if you knew, how much unbeleef lodges in my heart, and how great inconveniencyes I muſt wreſtle with, in caſe my ſcruples be not ſatisfyed, you would not much doubt, but that I would be as willing to receive ſatisfaction, as you have expreſt your ſelfe to give it. Thus leaving the following lines to your conſideration

I reſt,

S I R,

Yours obliged and

to be obliged.

An

An Enquiry after further satisfaction concerning obeying a change of government beleeved to be unlawfull.

The Question is this, whether though the change of a Government were beleeved not to be lawfull, yet it may lawfully be obeyed?

A late Treatise proposeth proofs for the affirmative; which before we come to examine, it will not be amisse to consider some things by way of premise towards the clearing of the point in question.

And here in the first place let it be considered, whence it is, that this or that particular person, comes to be a Subject to this or that particular Government or Governour? and this may be foure wayes.

1. In regard of originall or naturall descent and inferiority. Thus in the first age of the World, *Cain*, *Abel*, *Seth*, and the rest of *Adams* children and their Of-spring, were under the government of *Adam* by naturall right; and this is founded upon the primitive tearms of the 5th. Commandement, *Honour thy Father*.

And to this head we may referre the subjection of the younger Brother to the elder as being in ordinary course the Heir of his Fathers government. And thus, with *Chrysostom*, *Musculus*, and others, I understand that as spoken by God to *Cain* the elder Brother, concerning *Abel*. *Gen.* 4. 7. *Unto thee shall be his desire and thou shalt rule over him.* The like Phrases are used in the 3d. *chapter v.* 16. concerning the subjection of the Wife to the government of the Husband.

2. In regard of some speciall precept or institution of God. So whensoever God doth expressly assigne a person to government over a Kingdom, the Subjects of that Kingdome are thereupon bound to obey that person. So *David* was taken from feeding of Sheep to be Ruler over *Israel*. 1 *Sam.* 16. 1. *The Lord said unto Samuell, fill thine Horn with Oyle, & go, I will send thee to* Jesse *the Bethlemite: for I have provided me a King among his Sons.* The like we read concerning *Iehu*, who was in particular appointed by God to be King over *Israel*. These cases are extraordinary, and the ground of obeying in these cases is, that Soveraignty of God whereby he bestows authority on whom he pleases; expresst by some speciall word, whereby in such cases

ses the title of government may be known to be by divine donation. *Jer.*27 5.6. *I have made the Earth, th: man and the beast that upon the ground, by my great power, and by my out-stretched Arm, and have given it unto whom it seemed meet unto me; and now have I given all these Lands into the hand of* Nebuchadnezer *the King of* Babylon *my servant.*

3. In regard of place. Suppose a man, with his family, goes into some place which hath neither owner nor Inhabitant: he plants and possesses that place, and hath by right of primitive possession, authority to govern in that place; and if afterward any other come to live within compasse of that Plantation he ought to be subject to the Governour and government of the place; and so ordinarily, whatsoever Kingdome a man comes into; he is during his abode there subject to the authority of the place; and here is the proper roome for that saying, *persona sequitur locum.* And upon this account it is, that the fourth Commandement enjoynes the governour of a Family or City to see that the Sabbath be not prophaned by the stranger that is within their gates; for whilst he is within their bounds, he is within their jurisdiction; and thus the patriarks by sojurning in *Ægypt*, became subjects to *Pharaoh.*

4. In regard of consent. When those that are free to dispose of themselves or others under a Government or Governour, do by free consent constitute or lay a foundation for Government. Thus was the originall of the *Romans* under *Romulus*, as the learned Author of the Treatise; *de jure Magistratum in subditos* informs us. *A Romulo populus Romanus creatus fuisse dicitur, quia prius originalis populus non fuerit sed multitudo quædam ex variis gentibus & populis collecta. Romulus in hac gentes collectitias, non nisi ex ipsarum consensu dominatus est.* The Scripture gives many instances of the right of government founded in consent or agreement: amongst others the case of *Jephthah* is cleer. *Judg.* 11.8.11. *The Elders of Gilead said to Jephthah go with us and fight against the Children of* Ammon, *and be our head over all the Inhabitants of* Gilead, *and the people made him head and Captaine over them.*

Againe it is considerable, in what respect the change of a Government is beleeved to be unlawfull, whether it be:

1. Only in regard of the end, that those aime at, which do alter government. And in this case I conceive, if there be nothing to vitiate the change but a bad end in the changers, this doth not make it unlawfull to be obeyed.

Or 2. In regard of the comparative badneſſe of the Government brought in by change. As if inſtead of a well regulated monarchy, a more turbulent democraſie were brought in. In this caſe I conceive, if there be no exception againſt the change, but the bringing in of a leſſe commendable government, this doth not make it unlawfull to obey it.

Or 3 in regard of the Commiſſion that thoſe have that do alter the Government. For, if they be not plenipotentiaryes as to ſuch an act of inſtituting a new government; that new fabrick will want authority which is the ſoul of government, & therefore I do not ſee how it may be obeyd.

As put caſe, in *Eutopia* the *Majeſtas* or ſupreme authority lies in 3. Eſtates; a Prince, Nobles, and Repreſenters of the Communalty in Seſſion aſſembled, if theſe by their joynt authority do make very conſiderable alterations in erecting or aboliſhing Courts, enlarging or reſtraining power of ſtate-Officers. I make no queſtion but in this caſe the *Eutopians* may as well without ſcruple comply with theſe acts, as with the other Statute-laws of that Kingdome; becauſe theſe alterations are acts within the compaſſe of the ſupreme authority.

Again put caſe: theſe 3 Eſtates in Eutopia undertake to overthrow the Fundamentall government, and ſet up one of thoſe 3 to be the ſupreme and inſtead of the whole fundamental government, if the queſtion were put whether the inhabitants of Eutopia might obey that ſingle eſtate as the ſole ſupream, upon a Declaration or act of the 3. Eſtates to that effect: this I conceive a very difficult caſe: and the right ſtating of it will require a man well inſihted in the hiſtory of the *Eutopian* Government, and well ſtudied in that grand queſtion in Politicks, *an jura Majeſtatis ſint communicabilia?*

But put caſe, one of thoſe 3. Eſtates in *Eutopia* will undertake to exclude the other 2, and to ſet up it ſelf ſolely as ſupreme; and to Null all made by all 3 eſtates: if one that is not able to comprehend how that act is within compaſſe of the commiſſion of that one eſtate; doth thereupon beleeve that change of Government not to be lawfull. If the Queſtion be put, whether one ſo beleeving may obey that change, I confeſſe I am not ſatisfyed in the Affirmative, and my reaſon is this. Becauſe if that change be not an act of authority it may not be obeyed, and that it is not an act of authority, ſeems to me rational upon obvious inferences from theſe grounds. *Pars in partem non habet auctoritatem. Totum aggregatum eſt maius qualibet ſui parte. Ejuſdem eſt leges abolere cuius eſt condere.* The Engliſh of all which may be

be summed up in this: a lesser authority hath no authority over a greater.

Again put case, that estate in Eutopia was under a force when it did decree that change of Government: by reason of which force many Members were kept away: and one that doth not question the ordinary power of that estate, doth yet beleeve that the change being made by that Estate, under that disadvantage of force, is not lawful. If the question be put, whether in this case, he that so beleeves the unlawfullnesse of that change, may, till he be otherwise informed, obey that change: *I* say as in the former case, I am not satisfyed in the Affirmative. I shall illustrate this case by a supposition nearer home, there is in the first leaf of the *Beif Memento*, the copy of an ordinance, wherein is expresst, That all Votes, Orders, Ordinances passed in either or both houses of Parliament, between the 26 of July and the 6 of August 1647. were null and voyd at the making thereof, the Parliament being under a force and not free. Now suppose that in this space of time there had passed, in either or both houses of Parliament, a decree for the chang of Government: suppose further that one that truly honours the Parliament, and is of the same judgement with that Ordinance of the 20 of AVGVST 1647. and knew of the force mentioned therein; doth thereupon beleeve that change of government to be unlawfull, if it be asked whether he, so beleeving, may lawfully obey that change of government, I would answer, no. And my reason is this; positive precepts do imply negative duty: I mean thus; that command that sayes *Honor thy Father and thy Mother*, doth as well forbid obeying that which is not authority, as command obeying that which is authority: now that chang of Government (being (according to the supposition) decreed, the Parliament being under a force) is nothing at all of authority in it: because the decree is null and voyd at the time of the making thereof.

Now Reader take the right state of the question along with you, the question is not concerning the forbearing of resistance, or concerning some kinde of occasionall compliance, but only concerning obedience which is a duty of the 5 Commandement. Nor is the question in general whether a change of Government may be obey'd, but whether it may be obeyed by one that beleeves the unlawfulnesse of the change, nor shall it be questioned for me, whether though a change of government were beleeved to be in some respect not lawfull, it may yet lawfully be obeyed, but that which I hold is this, that [illegible]

change of a government be beleeved not to be lawfull, for want of sufficient authority in that change, then he that so beleeves may not lawfully obay it. For this I could produce proofes; But I wave them; and come now to consider, what the presbyterian proposer offers by way of proofe.

And in the first place that Scripture *Rom.* 13. is alledged. Which Scripture if cleerely opend, and rightly applyed, would state the present and many other controversies. And here I grant that Scripture requires subjection both to authority, and to persons clothed with that authority. Neither doe I deny, but that Scripture proves subjection due to *Claudius* and *Nero* when they were invested in authority. But here the proposer queries the lawfulnesse of their coming to be invested in their authority, and sayes, that the Souldiers was the foundation of *Claudius's* and of *Neroes* empire: and here I grant that the Souldiery was the occasion or means by which they came to be Emperours: But I deny that they received authority from the souldiery; they received it from the people or Senat; and they had power to give it. I touche before the originall of the *Roman* Power. *Romulus* was the first King, and he raigned by consent of those who had power to give up their consent. This *Romulus* did institute as the great councell a Senate consisting of 100 men; Which number afterwards encreased. The power of the Senate to confirme a supreame Governour, may be proved out of *Livius* and other authors. And that *Nero* had the consent of the Senate is cleere, by what the proposer *p.* 3 cites out of *Tacitus*, in these words. The Sentence of the Souldiers was followed with the consent of the Senate, and then it was not scrupled in the provinces. And that *Claudius* had also the consent of the Senate, may be gathered out of approved authors, and is not denyed by the proposer. I say then that, though the Souldiers could not give them a legall title, yet the Senate both could and did. That an unlawfull means and a legall title may meet together, I shall illustrate by a similitude in an other kind. The Usurer lends a man 100 pound, and has his bond for the principal and 8 pound interest; the borrower dyes, the Executor may pay that 8 pound above the principal: because though the Usurer hath not a morall right to that 8 l. by lending upon usury, yet he hath a legall title to it by the bond of the deceased. So he that by usurpation encroaches upon a Crowne; if besides this, he gaines also a legall title; may be obayed upon that legall title, though not upon the ground of Usurpation. To this purpose is that

De jure Magistratuum p.22. vitium quod ab initio usurpationi inerat potest postea emendari: adeo ut qui ab initio tyrannus fuit, possit legitimus et inviolabilis magistratus effici, si videlicet postea liber et legitimus accesserit eorum consensus, qui verum et legitimum magistratum creare et constituere possunt. The like answer to what I have given to that text Rom 13 doth Mr. *Burroughs* give to Dr. *Ferne*, his words are these *p.* 7. The apostle requires them not to resist their power, their ἐξουσία he doth not charge them not to resist their Tyranny. Certainly they could have no power but that which was given them by some agreement; if they challengd further it was no authority at all. And afterward *p.* 8. what they got and held meerely by force without any consent or agreement, was no power, no authority at all but might be resisted notwithstanding that prohibition.

From the Scripture argument the proposer passes to historicall observasions about the interruption of lineall succession to the Crowne in *England.*

To which I might Answer that, *a facto ad jus non valet argumentum.* Whatsoever title others have had in former ages, if the title since be cleere, wee neede not trouble our selves with those observations, which the proposer sayes, Learned men and states-men have been ignorant of. I shall therefore here only cite some passages out of a parliamentary acknowledgment. *Anno* 1. *Jacobi Regis. Your most humble and loyall Subjects, the Lords spirituall and temporall, and the Commons in this present Parliament assembled, in most humble and lowly manner doe beseech your most Excellent Majesty, that (as a memoriall to all posterities, amongst the records of your high court of Parliament for ever to endure, of our loyalty, obedience, and hearty humble affection) it may be published and declared in this high court of* Parliament, *and enacted by authority of the same, that wee (being bounden thereunto both by the lawes of God and Man) doe recognize and acknowledge, that immediately upon the dissolution and decease of* Elizabeth *late Queene of* England, *the imperiall Crown of the realme of* England, *and of all the Kingdomes, Dominions, and rights belonging to the same, did by inherent birthright and lawful and undoubted succession, descend and come to your most Excellent Majesty, as being lineally, justly, and lawfully, next and sole heir of the blood royall of this realme, as is aforesaid, and that by the goodnesse of God almighty and lawfull right of descent, under one* imperiall Crowne, *your Majesty is of the Kingdomes of* England &c. *King* ——— *And*

thereunto

thereunto we moſt humbly and faithfully do ſubmit, and obleige our ſelves our heirs, and poſterities for ever, untill the laſt drop of our bloud be ſpent. And doe beſeech your Majeſty to accept the ſame, as the firſt fruits in this high court of Parliament, of our loyaltie and faith to your Majeſty, and your Royall Progeny, and Poſterity for ever.

The Propoſer likewiſe cites the judgement of a few divines and caſuists for obeying the commands of an Vſurper. And I beleeve thoſe that abound with books may meet with far more of the contrary judgement. But becauſe our faith muſt not ſtand in the wiſdome of men; and we are upon a caſe of conſcience, wherein the opinions of men are of ſmal weight; I judge it ſuperfluous to multiply Authors: take therefore only 2. for a taſt, Mr. Burroughs anſwer to Dr. Ferne. p. 7. there is no body here that yet hath attempted to take any power away from the King that law hath given him. Howſoever the point of inheritance or conqueſt can not hinder; for firſt, none inherits but that which his Progenitors had, and his Progenitors had no more originally then by conſent was given them; therefore the difference between Kings by Inheritance, and Kings by election, in this caſe is not much. And for conqueſt, that only ſettles former right, or makes way to ſome farther agreement, to adde to what was former; the right comes not from power to conquer, or act of conquering, but from ſome agreement, precedent, or conſequent. *de jure Magiſtratuum* p. 27. *is qui alienos invadit nullo modo ſibi ſubditos, et ſi cupiat poſſe et ex bono et æquo dominari (ſicut de Piſiſtrato et Demetrio Phalareo apud Athenienſes legimus) poteſt tamen jure impediri, etiam armata manu, et a quibuſvis vel infimæ ſortis, quibus vim inferre voluerit, quum nullo jure illi obſtringantur.*

From the alledging of Authors the Propoſer comes again to arguing, and urging the former Scrip. ure, tells us, it ſpeaks not of obeying thoſe that ſhall be powers, but the powers that are, and thoſe that are in authority.

I grant it is ſpoken of the preſent powers: but who are thoſe? Surely thoſe which are conſtituted powers, not thoſe which are pretenders to power. Whatſoever force riſes up to hinder the Parliament, yet the Parliament is a power in being, becauſe it has a legall being. To this purpoſe is that which we read in Mr. Burroughs book, intituled *The glorious Name of God the Lord of Hoſts*, which book was printed by order from a Committee of the Houſe of Commons. In that book